IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1009 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

BAROT GANPATBHAI GOPALBHAI

Versus

PADMAVATI BUILDERS THRO' PARTNERS

Appearance:

1. Civil Revision Application No. 1009 of 2002

MR JIGAR P RAVAL for Petitioner No. 1-3

..... for Respondent No. 1

MR SHITAL R PATEL for Respondent No. 1/1-1/2

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 17/10/2002

ORAL JUDGEMENT

1. The present revision application is filed against the order passed by the ld. Jt. District Judge,

Vadodara on 16.12.2000 below an application for condonation of delay in filing the appeal against the decree passed by the trial court. The delay is of 5 years, 4 months and 28 days. The decree was passed by the trial court on 12.9.94 and the appeal was filed on 9.2.2000.

2. Heard Mr. Jigar P. Raval learned advocate appearing for the petitioner and Mr. Shital Patel learned advocate appearing for the respondent.

3. It is submitted by Mr. Raval that there are valid reason for condonation of delay in filing appeal late against the decree and order passed by the ld. Civil Judge (SD), Vadodara in Reg. Civil Suit No. 1639 of 1994. He has further submitted that the ld. judge has committed an error in observing that there was no sufficient reason for condonation of delay. As a matter of fact, in the application itself it was explained in detail as to how the delay occurred in filing the appeal. It is further stated that the petitioner was the owner of revenue survey no. 128, 126/2 and 133 and that on or about 20.12.99 the applicant has come to know regarding the decree or order passed by the ld. Civil Judge (SD), Vadodara in Reg.Civi Suit No. 1639/94 against the present petitioner and that thereafter the petitioner has made enquiry and in between the present respondent has filed the another suit No. 1817 of 1999 against the present petitioner and in the said suit the reference of the earlier suit and the decree was made. On the basis of these facts, it was pleaded that the petitioner has came to know for the first time in the month of December, 1999 about the filing of the earlier suit as well as passing of the decree. He has further submitted that none of these grounds were taken into consideration by the ld. District Judge and he straight way rejected the petitioner's application for condonation of delay. Mr. Raval has, therefore, submitted that the impugned order is not in accordance with law and contrary to the reasons and grounds mentioned by the petitioner in the application for condonation of delay. By not considering these aspects of the matter, ld. District Judge has committed jurisdictional error and hence, the impugned order is required to be interfered with by this Court.

4. Mr. Shital Patel learned advocate appearing for the respondent has submitted that the fact regarding filing of the suit as well as compromise decree passed was well within the knowledge of the petitioner. In fact, in the public notice given by the petitioner in the news paper itself shows that the documents were signed by

the petitioner and still inconsistent stand was taken by the petitioner in the application for condonation of delay as well as in the present revision application. He has further submitted that the compromise decree was passed on the pursis duly signed by the parties to the suit as well as by their respective advocates and the trial court has passed the said decree in the presence of the parties as well as their advocates and hence, it cannot be said that the petitioner was not aware about the passing of the decree. He has, therefore, submitted that there was no ground for condonation of delay. He has also submitted that revision would not lie against the impugned order in view of the amendment made in section 115 of CPC. He has also submitted that even an appeal filed by the petitioner before the ld. District Judge is not maintainable and for that purpose, he has relied on the decision of the Hon'ble Supreme Court in the case of Banwari Lal vs. Smt. Chando Devi (through L.R.) & Anr., AIR 1993 SC 1139. He has, therefore, submitted that the present revision application is required to be rejected.

5. I have heard both the learned advocates appearing for the respective parties and I have also considered the submissions. While going through the order passed by the ld. District Judge, it appears that the ld. District Judge has rejected the application on the ground that it did not contain any reasons though the reasons were given by the petitioner in the application for condonation of delay. Those reasons were not at all considered by the ld. District Judge and on the contrary, it was mentioned in the order that no reasons were given for condonation of delay. This is contrary to the facts on record and it appears therefrom that the order was passed without an application of mind. The ld. District Judge has also observed in the order that petitioner's advocate was not present when the matter was called out and he has, therefore, proceeded with the application without waiting for the advocate. However, the fact remains that the order was passed in very a cursory manner and it does not contain any valid reason while rejecting the petitioner's application for condonation of delay. When a party is thrown out on the ground of delay and latches at a very threshold though the proper reasons are given, it is not proper to decide the issue against that party on the ground of delay and latches without considering the genuineness and correctness of those reasons. With regard to the maintainability of the present revision application, I am of the view that while rejecting the application of condonation for delay, the entire appeal was dismissed and hence, the present amendment in sec.

115 of CPC is not applicable. With regard to the maintainability of the appeal before the District Court, even the Supreme Court has held in the judgement cited by Mr. Patel that the party challenging a compromise can file a petition under proviso to R. 3 of O. 23, or an appeal under S. 96(1) of the Code, in which he can now question the validity of the compromise in view of R. 1A of O. 43 of the Code. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the Explanation to the proviso to R. 3 and as such not lawful. Taking any view of the matter, the ld. District Judge is not justified in rejecting the delay condonation application. I, therefore, quash and set aside the impugned judgment and order dated 16.12.2000 passed by the ld. Jt. District Judge, Vadodara in Delay Condonation Application No. 27 of 2000 and allow the present revision application. Rule is made absolute with no order as to costs.

6. The ld. District Judge, Vadodara is directed to dispose of the appeal as expeditiously as possible preferably within a period of six months from the date of receipt of the writ of this Court or from the date of receipt of the certified copy of this order, whichever is earlier.

(K.A. PUJ, J.)
mandora/